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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections 3(n) and 332)
of the Communications Act)

Regulatory Treatment of Mobile Services)

GN Docket No. 93-252

To: The Commission

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COMMENTS

Liberty Cellular, Inc. d/b/a Kansas Cellular ("Liberty"), by its attorneys, hereby submits comments in the above-captioned rule making proceeding. Liberty is a cellular system licensee which operates exclusively in Rural Service Areas in the state of Kansas. Liberty and its affiliates are also prospective applicants for licenses in the Personal Communications Services ("PCS").

1. Liberty supports the general principle that similar mobile service offerings should be regulated in a consistent manner. Because of Liberty's expectation that the Commission will adopt uniform regulatory standards for similar mobile services, Liberty is concerned by the Commission's request for comment on the subject of equal access obligations for licensees of PCS systems. Specifically, the Commission invited comment on the following question: Should any or all classes of PCS providers of commercial mobile service ("CMS") be subject to equal access obligations like those imposed on LECs?^{1/}

^{1/} See Notice of Proposed Rule Making ("NPRM"), para. 71.

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Equal Access Obligations Should Not Be Imposed On PCS Or Other CMS Providers Except As Required Of The Bell And GTE Companies

A. Competitors Offering CMS Will Provide Choices To Customers

2. In a highly competitive marketplace, there should be little need for the Commission to specify the types of services, or features related to those services, that must be offered by service providers. It follows that only in the most unusual of circumstances, where there is a compelling public interest in the availability of a service or a service feature, should the Commission determine that a licensee must invest in the capability to offer that service or service feature.

3. With the advent of PCS the CMS business is about to change from a competitive to a highly competitive business. In most urban and rural markets CMS will soon be available from two cellular system licensees, multiple Specialized Mobile Radio ("SMR") and Enhanced SMR licensees, up to seven PCS licensees, and a myriad of other conventional VHF and UHF Public Land Mobile Service licensees. Clearly the prospective customer will have a wide choice of CMS providers. Those providers will have ample incentives to offer services and features which they perceive as desirable to the public. Were the Commission to impose new equal access obligations on some or all CMS providers, more investment would be required by licensees, and consumers would effectively have less of a basis to distinguish the service features and costs for service among the many licensees. Liberty submits that there

is no compelling need by the public for equal access to IX carriers, and that the Commission should not in this instance substitute its judgment for the business judgment of CMS entrepreneurs. Every CMS provider can be expected to appeal to customers with a variety of service and pricing options. Liberty respectfully urges the Commission to avoid imposing unnecessary requirements on CMS providers, cellular and PCS alike, in this case equal access, unless the CMS provider is already under an obligation to provide equal access.^{2/}

3. Alternatively, if a new equal access obligation is imposed on some CMS licensees, it should be imposed on all CMS licensees. If the Commission attempts to distinguish cellular from PCS, or small from large market areas, or operators with few customers from those with many, there will be many instances of unfair cost burdens to individual licensees. The concept of regulatory parity for CMS providers is inherently fair, and the burdens of regulation should be uniform. However, on balance, the CMS industry and the public will be better served by allowing CMS providers to make a business judgment on whether or not to offer equal access.

B. Even Without Equal Access Customers In Most Cases May Still Access Their Interexchange Carrier Of Choice

4. A CMS licensee's equal access capability does not, in most cases, affect the customer's ability to place calls over the

^{2/} As the Commission observed in footnote 94 of the NPRM, equal access obligations have been imposed on Bell Operating Company affiliated cellular carriers under the Modification of Final Judgment ("MFJ"). The GTE operating companies have comparable equal access obligations under the GTE Consent Decree.

facilities of the customer's IX carrier of choice. While Liberty's cellular system does not presently offer equal access to IX carriers, customers may still access an IX carrier of choice by placing a "1-800" call to any IX carrier with 800 service access. Accordingly, there is no need to require CMS providers to invest in facilities just to offer customers a choice of IX carriers.

C. Practical Considerations Limit The Availability Of Access To Interexchange Carriers

5. Many CMS providers such as Liberty do not provide service in metropolitan areas. Appropriately, they have located their switching facilities in places which are suitable to them for efficient maintenance but which may not be well located for access by IX carriers.^{3/}

6. If equal access obligations are mandated for Liberty, one question which arises is whether IX carriers of interest to customers would be willing to establish a meet point at Liberty's switch location. If not, what arrangements would be required of Liberty and the IX carriers to accommodate a customer's preference for a particular IX carrier? If an IX carrier did not establish a point of presence at Liberty's switch location, who would pay the transport cost to the point of presence? If the customer was obligated to bear the cost of transport, would the same choice of IX carrier still be made? Certainly there are many practical

^{3/} Liberty's switch is located in Moundridge, Kansas which is in McPherson County, about 45 air miles south of Salina and 35 air miles north of Wichita. The 1990 population of Moundridge was 1,531.

considerations involved in a decision to impose equal access obligations on CMS providers and it is doubtful that the Commission will develop a sufficient record in this proceeding to reach a conclusion compelling equal access service.

Conclusion

6. The CMS business will become increasingly competitive. Prospective customers will benefit from a variety of services and pricing available from many licensees. The Commission should not and need not require CMS providers to invest in equal access capability. Most if not all CMS systems without equal access capability will accommodate a customer's decision to avoid the IX routing selected by the licensee, by allowing the customer to utilize an "800" or other number to access an IX carrier of choice. Also, there are practical considerations such as rural switch locations, and transport costs to facilitate customer choices, which would render a decision to require equal access unfounded at this time on the record to be developed in this proceeding.

For all of the foregoing reasons, the Commission should not impose equal access obligations upon commercial mobile services providers, with the exception of the Bell and GTE companies which are subject to broad competitive operating requirements.

Respectfully submitted,

LIBERTY CELLULAR, INC.
d/b/a KANSAS CELLULAR

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November 8, 1993

CERTIFICATE OF SERVICE

I, Loren Bradon, a secretary in the law offices of Lukas, McGowan, Nace & Gutierrez, Chartered, hereby certify that I have on this 8th day of November 1993 sent, via hand delivery, a copy of the foregoing COMMENTS to the persons named below.



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